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IN THE

Supreme Court of the United States

No. 476

WILLIAM BROCKMUELLER, *Petitioner,*

vs.

STATE OF ARIZONA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

WILLIAM ROGERS, JR.
604 Security Building
Phoenix, Arizona
Attorney for Petitioner

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

The petition of WILLIAM E. BROCKMUELLER, respectfully represents:

That your petitioner was convicted of the crime of "contributing to the delinquency of a minor," as defined in Section 13-822 A.R.S. (1956), (appendix a) and this conviction in the Superior Court of the State of Arizona, in and for the County of Maricopa, Cause No. 31568, was appealed to the Supreme Court of the State of Arizona. In that appeal, No. 1131 (not yet reported), the conviction was upheld. A motion for rehearing was subsequently denied.

The opinion was rendered June 17, 1959, (appendix b) and the subsequent motion for rehearing was denied and the mandate issued on July 14, 1959.

This petition is submitted pursuant to the authority of Title 28, Section 1257 of the United States Code, and Rule 38 of the Supreme Court Rules.

The only question presented for review herein is the constitutionality of Section 13-821 A.R.S. (1956) when construed in view of the provisions of the "due process" clause of the XIVth Amendment of the Constitution of the United States, Section 1, ". . . nor shall any state deprive any person of life, liberty or property, without due process of law."

The question of the constitutionality of the Statute in question herein was raised during the trial in the lower court, by a motion for a directed verdict at the close of the State's case, upon the grounds that the Statute was unconstitutional and violative of the provisions of the XIVth Amendment to the Constitution of the United States of America, and was re-urged upon a motion for arrest of judgment. (appendix c)

This argument was likewise urged upon appeal to the Supreme Court of the State of Arizona.

Your petitioner respectfully submits that he has exhausted all remedies available to him in the Courts of the State of Arizona; that he has no avenue of relief available to him, except to have this Honorable Court review the proceedings had in the Superior Court of the State of Arizona and the Arizona Supreme Court. The Statute, which your petitioner was convicted of violating, does not establish a reasonable standard of guilt, and either forbids or requires the doing of acts in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.

This, petitioner submits, violates the first principal of due process of law.

WHEREFORE, petitioner respectfully prays that this Honorable Court enter its Order granting a Writ of Certiorari herein, and authorizing and directing the Clerk of this Court to forthwith notify the Supreme Court of the State of Arizona, the Superior Court of the State of Arizona, in and for the County of Maricopa, and counsel of record of the granting of this petition.

Respectfully submitted,

William Rogers Jr.

WILLIAM ROGERS, JR.
604 Security Building
Phoenix, Arizona
Attorney for Petitioner

APPENDIX A

Section 13-821 A.R.S.—DEFINITIONS:

A. In this article, unless the context otherwise required:

1. "Dependent person" means a person under the age of eighteen years:

(a) Who is found begging, receiving or gathering alms, whether actually begging or under the pretext of selling or offering anything for sale.

(b) Who is found in a street, road or public place for the purpose of begging, gathering or receiving alms.

(c) Who is a vagrant.

(d) Who is found wandering and not having a home, or a settled place of abode, or a guardian or any visible means of subsistence.

(e) Who has no parent or guardian willing to exercise, or capable of exercising, proper parental control over him.

(f) Who is destitue.

(g) Whose home, by reason of neglect, cruelty or depravity of his parents, or either of them, or on the part of his guardian, or on the part of the person in whose custody or care he may be, is an unfit place for such person.

(h) Who frequents the company of reputed criminals, vagrants or prostitutes.

(i) Who is found living or being in a house of prostitution or assignation.

(j) Who habitually visits, without parent or guardian, a saloon, or place where spirituous, vinous or malt liquors are sold, bartered or given away.

(k) Who persistently refuses to obey the reasonable orders or directions of his parent or guardian.

(l) Who is incorrigible, that is, beyond the control and power of his parents, guardian or custodian by reason of the vicious conduct or nature of the person.

(m) Whose father is dead, or has abandoned his family, or is an habitual drunkard, or whose father or mother does not provide for such person, and it appears that such person is destitute of a suitable home or adequate means of obtaining an honest living, or who is in danger of being brought up to lead an idle, dissolute and immoral life, or when both parents are dead, or the mother or father, if living, is unable to provide proper support and care of such person.

(n) Who habitually visits, without parent or guardian, a billiard room or pool room.

(o) Who, being not over the age of fourteen years, refuses to attend public or private school, as directed by his parent, guardian or legal custodian.

(p) Who habitually uses intoxicating liquors as a beverage, or habitually smokes cigarettes, or uses

opium, cocaine, morphine or other similar drugs without direction of a competent physician.

(q) Who from any cause is in danger of growing up to lead an idle, dissolute or immoral life.

B. "Delinquent person" includes any person under the age of eighteen years who violates a law of this state, or an ordinance of a county, city or town defining crime.

C. "Delinquency" means any act which tends to debase or injure the morals, health or welfare of a child.

Section 13-822, A.R.S.—Contributing to delinquency and dependency; punishment; procedure.

A. A person who by any act, causes, encourages or contributes to the dependency or delinquency of a child, as defined by Sec. 13-821, or who for any cause is responsible therefor is guilty of a misdemeanor punishable by a fine not exceeding three hundred fifty dollars, by imprisonment in the county jail for not to exceed one year, or both.

B. The procedure and prosecution shall be the same as in other criminal cases.

C. When the charge concerns the dependency of a child or children, the offense for convenience may be termed contributory dependency, and when the charge concerns the delinquency of a child or children, the offense for convenience may be termed contributory delinquency.

APPENDIX B

Opinion of the Supreme Court

IN THE SUPREME COURT OF THE STATE OF ARIZONA

WILLIAM BROCKMUELLER, *Appellant,*

vs.

THE STATE OF ARIZONA, *Appellee.*

No. 1131

STRUCKMEYER, Justice.

Appellant appeals from a conviction for contributing to the delinquency of a minor, a violation of A.R.S. § 13-822.

The gist of appellant's first two assignments of error is the insufficiency of the evidence to show any conduct on his part which constitutes a violation of the statute. As indicated by the bill of particulars, the specific charge against him was that he actively urged one Patsy———, a seventeen-year-old girl, to allow certain motion pictures to be taken of her in the nude. Apellant argues that the evidence was insufficient to show such an urging or encouraging on his part. The record, however, indicates to the contrary.

All the events in question took place at a home in Phoenix, Arizona. The victim of the offense testified:

"Q. And then just what happened? Anybody else talking to you about taking them?

"A. Well, Bill said that is wasn't really bad.

"Q. Now, was he referring to the taking of the nude pictures?

"A. Yes.

"Q. You are speaking of Mr. Brockmueller? I wonder if you'd refer to him as Mr. Brockmueller, Bill Brockmueller, so we can get the whole name here?

"A. All right.

"Q. Then, Patsy, you did take some nude pictures?

"A. Yes."

A.R.S. § 13-822, states as follows:

"A person who by any act, * * * encourages * * * delinquency of a child, as defined by § 13-821, * * * is guilty of a misdemeanor."

Subsection C, A.R.S. § 13-821, defines "delinquency" as:

"* * * any act which tends to debase or injure the morals, health or welfare of a child."

These two sections, taken together, serve to prohibit the encouragement of any act which tends to debase or injure the morals, health or welfare of a child.

Appellant's argument that the statute is not violated unless the "encouragement" is so pronounced as to constitute an "aiding or abetting", has no application in this case. The evidence shows that appellant participated directly in encouraging the commission of the acts in question. This is all that the statute requires. Appellant's first two assignments of error are not well taken.

Appellant's third assignment of error is that the conviction is void, since the statute under which it was obtained is violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States, for the reason that the statute fails to establish a standard of guilt and fails to prescribe the conduct which is prohibited. Appellant argues that a conviction could be obtained for the doing of any act which might, at the moment, be in accordance with the notions of a judge or juries as to what was injurious to the morals, health, or welfare of a child. This argument was repudiated in Loveland v. State, 53 Ariz. 131, 86 P. 2d 942, wherein we held that the sections above quoted were not violative of the Constitution of the State of Arizona. However, appellant argues that the more recent case of Musser v. Utah, 333 U. S. 95, 92 L. Ed. 562, 68 S. Ct. 397, is authority for the proposition that this statute is violative of the Fourteenth Amendment to the Constitution of the United States. We do not agree. In the Musser case, the statute in question was completely dissimilar to the statute here involved.[1] It is of a type sometimes called "contra bonos mores", prohibiting the commission of any act detrimental to the public interest. The difference in scope is apparent. The Arizona statutes prohibit only the causing or encouraging of acts which have the effect of injuring the morals, health or welfare of a child. Such statutes have a long history of common-law interpretation which renders sufficiently clear and meaningful language which might otherwise be vague and uncertain.

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1 Utah Code Anno 1943 § 103-11-1 (5): To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws;—they are punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding $1,000.

Even in criminal statutes, the language adopted need not afford an interpretation approaching mathematical certainty. People v. Deibert, 117 Cal. App 2d. 410, 256 P. 2d 355. We hold that the Arizona statutes are sufficiently certain and definite to apprise men of ordinary intelligence of the conduct which the statute prohibits. Cf. State v. Roessler, 58 N. M. 102, 266 P. 2d 351.

Appellant's fourth assignment of error is unsupported by argument in the brief, and hence will be considered as having been abandoned.

The judgment is affirmed.

FRED C. STRUCKMEYER, JR.
Justice

APPENDIX C

Portion of Reporter's Transcript, page 73:

"MR. ROGERS: I have one further matter, if the Court please; I would like for the record to urge that this action be dismissed upon the grounds, further grounds, and for the reason that the Statute, Section 15-821, of the Arizona Revised Statutes, and Section—or, correction, 13-822, we are referring to specifically, that is the contracting—that is the contributing Statute, and that together with the following sections, considered with this one, the Statutes cited upon their face and as constituted and applied are wholly unconstitutional and violate the due process clause, the 14th Amendment.

"THE COURT: What is the last remark?

"MR. ROGERS: That the Statutes, as considered together, are unconstitutional and violative of the due process clause of the 14th Amendment.

"THE COURT: 13-822 is a pretty broad—

"MR. ROGERS: Yes, that's one of the bases, of course, for the claim that the Statute is unconstitutional, that it is vague and uncertain. I could dwell on that more if the Court would like to hear that at the present time."